FOR PUBLICATION

Appeal No. 00-021

IN THE SUPREME COURT OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN THE MATTER OF THE ESTATE OF

JOSEPH RUFO ROBERTO,
aka JOSEPH RUFU ROBERTO,

Deceased.

NIEVES F. SABLAN,
Appellant,

v.

JOSEPH L. ROBERTO, as Executor,
Appellee.

OPINION

Cite as: *In re Estate of Roberto,* 2002 MP 23

Civil Action No. 98-0983D
Argued and submitted June 6, 2001
Decided October 28, 2002

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BEFORE: ALEXANDRO C. CASTRO, Associate Justice; JUAN T. LIZAMA, Justice *Pro Tempore*; and VIRGINIA SABLAN-ONERHEIM, Justice *Pro Tempore*

CASTRO, Associate Justice:

INTRODUCTION

¶1 Appellant Nieves F. Sablan [hereinafter Ms. Sablan or Appellant] appeals the trial court's order dismissing her complaint against Joseph Lee Roberto [hereinafter Executor or Respondent] as executor of the estate of Joseph Rufo Roberto, a.k.a. Joseph Rufu Roberto [hereinafter Decedent].

¶2 The notice of appeal being timely, pursuant to the Northern Mariana Islands Probate Law, 8 CMC §§ 2101-2927 [hereinafter Probate Law], we have jurisdiction in accordance with N.M.I. Const. art. IV, § 3.

¶3 We reverse and remand.

QUESTION PRESENTED AND STANDARD OF REVIEW

¶4 Whether Respondent was entitled to dismissal under Commonwealth Rules of Civil Proceudre 12(b)(6),[1] or in the alternative, summary judgment under Commonwealth Rules of Civil Procedure 56.[2] Both dismissal and summary judgment motions are reviewed by this Court de novo.[3] *See, e.g., Apatang v. Marianas Pub. Land Corp.*, 1 N.M.I. 140, 146 (1990) (regarding summary judgment); *Triple J*

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[1] The Commonwealth Rules of Evidence apply to probate proceedings in NMI Superior Court. COM. R. EVID. 101; *In re Estate of Deleon Castro*, 4 N.M.I. 102, 105 n.1 (1994).

[2] Specifically, Appelant asked this Court to consider the sufficiency of the notice to creditors published by Executor, as well as her status as a creditor and a reasonably ascertainable interested party. Because we reverse on other grounds, we need not reach these issues.

[3] At the appellate level, orders under both Rules 12(b)(6) and 56 are *reviewed* de novo. But the standards for *deciding* the motions are different, and those applied by the trial court were incongruous. *See infra* ¶¶ 12-18.

Saipan, Inc. v. Agulto, 2002 MP 11 ¶ 2 (regarding summary judgment); *O'Connor v. Div. of Pub. Lands*, App. No. 97-019 (N.M.I. Sup. Ct. Feb. 9, 1999) (Opinion at 2) (regarding dismissal).

FACTS AND PROCEDURAL HISTORY

¶5 Beginning in or around 1951, Appellant was involved in a 38-year relationship with Decedent.[4] The couple lived together in Guam. According to Appellant, she contributed a great deal of effort and money to the personal relationship and to joint business enterprises. In return, Decedent made many promises to her, and repeatedly assured her that she and her children would always be cared for, upon his death if not during his lifetime. The relationship ended in or around 1989, when Decedent moved to Saipan.

¶6 Decedent died in 1998; Appellant was not named as a beneficiary in his will.

¶7 Following a hearing on October 20, 1998, the CNMI trial court admitted Decedent's will to probate and appointed Decedent's eldest nephew, Joseph Lee Roberto, as Executor of the estate. On December 18, 1998, Executor placed a notice in the Marianas Variety to inform creditors that claims against Decedent had to be filed in the CNMI Superior Court within sixty days of first publication. The notice ran four times, the final being January 8, 1999.

¶8 Approximately nine months later, on September 24, 1999, Ms. Sablan filed a petition and claim against the estate in the CNMI court.[5] She amended these filings on November 12, 1999.

¶9 On December 3, 1999, Executor filed a motion to dismiss Ms. Sablan's claims. The trial court granted dismissal under Rule 12(b) on February 4, 2000. The basis for its ruling was that Ms. Sablan had

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[4] The two were never married to each other, and Appellant remained legally married to but separated from a third party throughout.

[5] Ms. Sablan also filed a parallel suit in the ancillary probate in the Guam Superior Court on the same day. As a matter of policy, we discourage such duplication.

run afoul of the sixty-day non-claim section of the Probate Law, 8 CMC § 2924(a)(1), by filing her petition and claims after the deadline had expired.[6]

¶10 Ms. Sablan's motion for reconsideration in the trial court was denied on May 31, 2000.

ANALYSIS

I. Review under standards for summary judgment.

¶11 Appellant asserts that her claims against Decedent's estate should not have been dismissed. Her challenge stems from the trial court's order granting dismissal under Rule 12(b)(6) of the Commonwealth Rules of Civil Procedure.

¶12 Rule 12(b)(6) examines the threshold issue of whether a plaintiff is entitled to present evidence by allowing a defendant to challenge the contents of a complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001) (a motion to dismiss "tests the legal sufficiency of a claim"); *see also In re Adoption of Magofna*, 1 N.M.I. 449, 454 (1990). A motion to dismiss confines analysis to the allegations and implications contained on the face of the complaint.[7] *See Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001); *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1989).

¶13 When, on a motion to dismiss, matters outside the pleadings are presented to and not excluded by the judge, such motion is treated as one for summary judgment. COM. R. CIV. P. 12(b)(6); *Furuoka v. Dai-Ichi Hotel*, 2002 MP 5 ¶¶16-19; *PAC United Corp. (CNMI) v. Guam Concrete Builders*, 2002 MP 15 ¶¶10-14.

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[6] For text and analysis of the non-claim provision, see *infra* ¶¶ 22-25.

[7] This makes 12(b)(6) a poor vehicle for a defendant relying on an affirmative defense, particularly since dismissal for failure to state a claim is improper unless "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Sablan v. Tenorio*, 4 N.M.I. 351, 355 (1996).

¶14 Like a motion to dismiss, a motion for summary judgment also tests whether a case should move forward toward trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250, 106 S. Ct. 2505, 2511, 91 L. Ed. 2d 202, 213 (1986). However, the latter takes one additional step, assessing the existence of genuine disputes of material fact and movant's entitlement to judgment "as a matter of law." COM. R. CIV. P. 56(c); *Borja v. Goodman*, 1 N.M.I. 225, 231 (1990).[8]

¶15 Courts considering Rule 56 motions must view all undisputed facts in the light most favorable to the non-moving party. *Cabrera v. Heirs of De Castro*, 1 N.M.I. 172, 176 (1990); *Cushnie v. Arriola*, App. No. 97-052 (N.M.I. Sup. Ct. April 11, 2000) (Opinion at 2). A fact is undisputed if it is established, free of genuine controversy, under the applicable evidentiary burden. *Liberty Lobby, Inc.*, 477 U.S. at 254, 106 S. Ct. at 2513, 91 L. Ed. 2d at 215-16 (whether a finder of fact could reasonably find for either party "cannot be defined except by the criteria governing what evidence would enable" such a finding).

¶16 Summary judgment is proscribed where a reasonable inference can be deduced under which the nonmoving party could recover. *Castro v. Hotel Nikko Saipan, Inc.*, 4 N.M.I. 268, 272 (1995) (the essential inquiry is whether the evidence presents "sufficient disagreement" to require a full trial or whether it is "so one-sided" that movant "must prevail" as a matter of law); *Borja v. Rangamar*, 1 N.M.I. 347, 355 (1990) (summary judgment is inappropriate if a verdict for the nonmoving party would be reasonable on the evidence).[9]

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[8] In this context "fact" refers to both evidentiary and ultimate facts. "Evidentiary facts" are those upon which conclusions of "ultimate fact" are based; facts which furnish evidence of the existence of some other fact. *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541, 1547n.7 (9th Cir. 1994) (en banc) (*citing* BLACK'S LAW DICTIONARY); *Baca v. Helm*, 682 P.2d 474, 479 (Colo. 1984) (Neighbors, J. concurring).

[9] Both (*Rangamar* & *Hotel Nikko Saipan, Inc.*) quoting directly from *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).

¶17 The movant always bears the initial burden of production on summary judgment. *Heirs of De Castro*, 1 N.M.I. at 176. Where a defendant is the moving party, he must point to a lack of evidence supporting the claims against him or he must be able to show "that the undisputed facts establish every element of an asserted affirmative defense" at the outset. *Santos v. Santos*, 4 N.M.I. 206, 210 (1994); *Furuoka*, 2002 MP 5 ¶22.

¶18 To survive summary judgment once a moving defendant has successfully asserted an affirmative defense, a non-moving claimant must produce evidence creating a genuine issue of material fact in support of a theory which could defeat the defense.[10] *Charfauros v. Bd. of Elections*, 1998 MP 16 ¶ 33, 5 N.M.I. 188, 195; *Hotel Nikko Saipan, Inc.*, 4 N.M.I. at 272. However, the burden of production does not shift to the non-moving plaintiff unless and until the moving defendant has successfully met his initial burden. *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 159-60, 90 S. Ct. 1598, 1609-10, 26 L. Ed. 2d 142, 155-56 (1970) ("where the evidentiary matter in support of the motion [is insufficient], summary judgment must be denied *even if no opposing evidentiary matter is presented* ") (*quoting* FED. R. CIV. P. 56(C) Advisory Committee note on 1963 amendment); *Heirs of De Castro*, 1 N.M.I. at 176; *Riley v. Pub. Sch. Sys.*, 4 N.M.I. 85, 89 (1994).[11]

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[10] Or, if the non-moving plaintiff is not in possession of sufficient evidence but believes such to exist, additional time for discovery should be sought, pursuant to COM. R. CIV. P. 56(f).

[11] It has been said of summary judgment that the movant bears the "initial *and* ultimate burden." *Furuoka v. Dai-Ichi Hotel*, 2002 MP 5 ¶22 (emphasis added); *Santos v. Santos*, 4 N.M.I. 206, 210 (1994). Perhaps this statement has caused some confusion, as summary judgment involves several different burdens, and it frequently is unclear which is being invoked.

The burden of production is the responsibility to move forward with the presentation of evidence regarding evidentiary facts. *Dir., Office of Workers' Comp. Progs. v. Maher Terminals, Inc.*, 512 U.S. 267, 272-77, 114 S. Ct. 2251, 2254-58, 129 L. Ed. 2d 221, 227-31 (1994). On summary judgment, the moving party always bears the initial burden of production. *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 159, 90 S. Ct. 1598, 1609-10, 26 L. Ed. 2d 142, 155 (1970). However, if there has been sufficient time for discovery, and if the moving party will not bear the ultimate burden of persuasion at trial, he may fulfil the initial burden of production by pinpointing an absence of evidence supporting his opponent's claims rather than adducing evidence to negate an essential element of such claim or

(continued...)

¶19 The record before us strongly suggests that several pieces of evidence were submitted in support of the motion to dismiss.[12] Because there is some suggestion that these matters outside the pleadings were

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[11](...continued)
affirmatively supporting his own affirmative claims. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 2553, 91 L. Ed. 2d 265, 274 (1986); *Adickes*, 398 U.S. at 160-61, 90 S. Ct. at 1609-10, 26 L. Ed. 2d at 155-56; *Nissan Fire & Marine Ins. Co. v. Fritz Cos., Inc.*, 210 F.3d 1099, 1106 (9th Cir. 2000) (reconciling the apparent conflict between *Celotex* and *Adickes*). If, and only if, the moving party meets his initial burden then the burden of production shifts to the nonmoving party, who must produce just enough evidence to create a genuine fact issue. *Adickes*, 398 U.S. at 160, 90 S. Ct. at 1610, 26 L. Ed. 2d at 156; *Celotex Corp.*, 477 U.S. at 331, 106 S. Ct. at 2557, 91 L. Ed. 2d at 279 (Brennan, J. dissenting).

The burden of persuasion is the onus to affirmatively convince the trier of fact of the existence or non-existence of required facts. *Maher Terminals, Inc.*, 512 U.S. at 272-77, 114 S. Ct. at 2254-58, 129 L. Ed. 2d at 227-31; *see also* COM. R. EVID. 301 (regarding presumptions and the "risk of nonpersuasion"). On summary judgment, the burden of persuasion regarding the absence of genuine issues of material fact always remains with the moving party. *Celotex Corp.*, 477 U.S. at 330, 106 S. Ct. at 2556, 91 L. Ed. 2d at 278 (Brennan, J. dissenting) (*citing* 10A CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2727 at 121 (2d ed. 1983)). For this reason, any doubt as to the existence of a genuine issue must be resolved against the movant. *Arney v. United States*, 479 F.2d 653, 659 (9th Cir. 1973). Because summary judgment forecloses a trial on the merits, the burden of persuasion cannot be satisfied unless it is clear that a trial is unnecessary. *See Adickes*, 398 U.S. at 158-159, 90 S. Ct. at 1609, 26 L. Ed. 2d at 155.

"**Ultimate burden**" is used inconsistently. First, "ultimate burden" may refer to the final burden of persuasion on a particular question or at a particular phase, as in the quotation above regarding the burdens on summary judgment. *Nissan Fire & Marine Ins. Co.*, 210 F.3d at 1102. Second, a party may be said to have the "ultimate burden" where that party would bear the burden of persuasion on a particular issue at trial. *Id*.

Terms such as "**burden of demonstrating**," "**burden of establishing**," and "**burden of showing**" are used indiscriminately, at times describing an ultimate burden, at others *either* the burden of production *or* the burden of persuasion, and, at other times, used in reference to the combined burdens of production *and* persuasion. *See, e.g., Sorrels v. McKee*, 290 F.3d 965, 969 (9th Cir. 2002); *Devereaux v. Abbey*, 263 F.3d 1070, 1076 (9th Cir. 2001); *Abromson v. Am. Pac. Corp.*, 114 F.3d 898, 902 (9th Cir. 1997); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561, 112 S. Ct. 2130, 2136, 119 L. Ed. 2d 351, 364 (1992).

Finally, "**burden of proof**" is at times used to describe *either* the burden of production *or*, more commonly, the burden of persuasion, and, at other times, used in reference to the combined burdens of production *and* persuasion, while, in an entirely different context, the same term also defines the degree or weight of persuasion required, as in proof "by a preponderance of the evidence," "by clear and convincing evidence," or "beyond a reasonable doubt." *Maher Terminals, Inc.*, 512 U.S. at 272-79, 114 S. Ct. at 2254-58, 129 L. Ed. 2d at 227-31; *see, e.g., Leisek v. Brightwood Corp.*, 278 F.3d 895, 900 (9th Cir. 2002); *Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 922 (9th Cir. 2001); *Carson Harbor Village, Ltd. v. Unocal Corp.*, 227 F.3d 1196, 1211 (9th Cir. 2000); *Celotex Corp.*, 477 U.S. at 322, 106 S. Ct. at 2552, 91 L. Ed. 2d at 273.

[12] We were provided with copies of the certificate of Decedent's death, Decedent's will, the original petition and order to admit Decedent's will to probate, letters testamentary, and notarized proof of publication of notice to creditors. (Some of these items were exhibits appended either to other items listed or to documents from the Guam proceedings. The latter are not itemized here as they have no bearing on the present case.) Presumably all were submitted in support of, or opposition to, the motion to dismiss, though they are not designated as such.

considered, and no indication that they were excluded, by the trial court, we deem this appeal to be of an order granting summary judgment.

II. Movant failed to meet the initial burden for grant of summary judgment.

¶20 In the motion upon which this appeal is based, Executor apparently raised the shortened statute of limitations on probate claims, provided at 8 CMC § 2924(a)(1), as a defense to Ms. Sablan's petition against the estate of Deceased. On the uncontroverted evidence before us, Executor cannot establish his entitlement to the foreshortened claims period.[13] Therefore, the order granting Executor's motion is reversed.[14]

A. Elements of sixty-day non-claim defense.

¶21 Construction of rules and statutes is an issue of law, which we analyze de novo. *Ada v. Sablan*, 1 N.M.I. 415, 422 (1990); *Commonwealth v. Kaipat*, 2 N.M.I. 322, 327-28 (1991). A basic cannon of construction is that language should be given its plain meaning. *Commonwealth v. Nethon*, 1 N.M.I. 458, 461 (1990); *Tudela v. Marianas Pub. Land Corp.*, 1 N.M.I. 179, 185 (1990) (clear language not to be construed "contrary to its plain meaning").

¶22 At issue in this case is the "non-claim" section of the Probate Law, which reads:

> (a) All claims against a decedent's estate which arose before the death of the decedent . . . [whether] founded on contract, tort, or other legal basis . . . are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:
>
> (1) Within 60 days after the date of the first publication of notice to creditors *if notice is given in compliance with the Commonwealth Trial Court Rules of Probate Procedure* . . . .

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[13] Appellant did not identify this issue, but we inevitably encounter it in conducting a de novo review.

[14] The trial court improperly ruled for Executor without requiring him to affirmatively establish the elements of the defense, seemingly in disregard of the relative burdens and the required bias in favor of the non-moving plaintiff at this stage in the pre-trial proceedings.

(2) Within three years after the decedent's death, if notice to creditors has not been published.

8 CMC § 2924(a) (emphasis added).

¶23 The Commonwealth Rules of Probate Procedure "are to be used in conjunction with the Code" in order to ensure "the efficient probate of an estate with notice to all interested persons so that upon closing of the estate a fair and proper distribution . . . is affected." COM. R. PROB. P. 1. To that end, prior to the hearing on a petition for probate of a will, Rule 6 requires that, "[t]he petitioner shall: (1) Prepare the notice of hearing; . . . . (3) *Cause the notice of hearing to be published* in a newspaper published in the Commonwealth at least once, *said publication to be at least five days before the hearing*; . . . ." COM. R. PROB. P. 6. The first paragraph of Rule 11 adds an element to the required publication, "[t]he notice required to be published pursuant to Rule 6(3) shall include a notice to creditors of the decedent or his estate that they must file their claims with the Clerk of Courts within 60 days of the first publication of said notice." COM. R. PROB. P. 11.[15]

¶24 The plain language of section 2924(a), read in conjunction with Rules 6 and 11, clearly conditions entitlement to the sixty-day limitations period upon publication, at least five days prior to the probate

[15] It is common throughout the United States to closely restrict the period following a person's death, during which claims against the decedent's estate may be made. *See Tulsa Prof. Collection Servs. Inc. v. Pope*, 485 U.S. 478, 489, 108 S. Ct. 1340, 1347, 99 L. Ed. 2d 565, 578 (1988). For constitutional due process reasons, notice to creditors is required in all such jurisdictions. *Id*.

hearing, of sufficient notice to creditors.[16] Furthermore, as the exclusive countermeasure to subsection 2924(a)(1), the three-year period provided for in subsection 2924(a)(2) logically must be read to apply whenever notice has not been published in full accordance with the Rules.[17]

¶25 Thus, to merit a grant of summary judgment on the basis of the sixty-day non-claim provision, a defendant must demonstrate compliance with the constructive notice scheme. In the alternative, inability to affirmatively prove adherence leaves an estate open to creditor claims for three years from the date of the decedent's death.

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[16] A close reading the Probate Law and Rules of Probate Procedure indicates that notice to creditors should: (1) inform interested parties that there is a deadline for filing claims against the estate, (2) specify the date of that deadline, (3) explicitly warn interested parties that failure to meet the deadline will result in claims being permanently barred, and (4) announce the court in which the estate is pending.

An effective notice might be worded any number of ways. For guidance, we offer one possible template:

> Notice is hereby given by the undersigned, [*name*], executor of the estate of [*name*], deceased, that all creditors of and persons having claims against the decedent must file their respective claims in the office of the Clerk of the Superior Court, Commonwealth of the Northern Mariana Islands, [*Saipan/Tinian/Rota*], prior to [*date*]. Failure to file claims by [*date*], will result in the claims being barred.

[17] Some will consider this a harsh result, but the legal fiction of constructive notice dictates that publication requirements be construed fairly strictly regardless of the context in which they arise. *See, e.g., Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 320, 70 S. Ct. 652, 660, 94 L. Ed. 865, 876 (1950) ("Publication may theoretically be available for all the world to see, but . . . . [w]e have before indicated in reference to notice by publication that, '[g]reat caution should be used not to let fiction deny the fair play that can be secured only by a pretty close adhesion to fact.'") (*quoting McDonald v, Mabee*, 243 U.S. 90, 91, 37 S. Ct. 343, 343-44, 61 L. Ed. 608, 609 (1917)); *Country Club Estates, L.L.C. v. Loma Linda*, 213 F.3d 1001 (8th Cir. 2000) (conversion proceedings require strict compliance with constructive notice procedure); *Pelfresne v. Williams Bay*, 917 F.2d 1017, 1020-21 (7th Cir. 1990) (constructive notice statute regarding prior interests in chain of title construed literally); *Fleet Mortg. Corp. v. Bryant*, No. 88 C 1684, 1988 U.S. Dist. LEXIS 14061, (N.D. Ill. Dec. 9, 1988) (because default proceedings involve important property rights, party relying on constructive notice must ensure that publication complies with the statutory requirements in all material respects); *Amoco Prod. Co. v. United States*, 619 F.2d 1383, 1388 (10th Cir. 1980) (noting, regarding chain of title, that "[t]he doctrine of constructive notice, which creates a fiction and deals with hypothetical facts, is a harsh doctrine which should be resorted to reluctantly and construed strictly"); *United States v. Suring State Bank*, 150 F. Supp. 60, 62 (E.D. Wis. 1957) ("It is elementary that where there is a statute creating a fiction, like constructive notice, it should be strictly construed.").

B. Failure to demonstrate entitlement to summary judgment.

¶26 Without explanation, the trial court's order declares that Appellant filed her petition "clearly way beyond the sixty day period." Reducing its analysis of the non-claim defense to a single conclusory sentence, the order effectively presumes the existence of undisputed facts sufficient to fulfill the notice requirement.[18] The evidence indicates precisely the opposite.

¶27 According to the order appointing the executor and admitting the decedent's will to probate, the petition for probate was heard on October 20, 1998. Thus, for the estate to be in compliance with the notice Rules, and thereby eligible for the sixty-day limitation period,[19] first publication of the notice to creditors would have had to occur no later than October 15, 1998. To the contrary, Executor's notarized proof of publication shows December 18, 1998, as the date of first publication. This is not even in keeping with the spirit, let alone the letter, of the law.

¶28 Unless Executor presents new evidence at trial proving otherwise, the non-claim statute's sixty-day deadline shall not attach, and claims against the estate of Joseph Rufo Roberto shall not be barred if filed within three years of the date of his death, that is, prior to July 14, 2001.[20]

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[18] Ideally, the trial court would "routinely identify the undisputed facts that form the basis of its ruling" so that we might understand its reasoning. *Sablan Enter. v. New Century, Inc*., 1997 MP 32 ¶21 n. 4, 5 N.M.I. 144, 147 (Mack, Special J., dissenting in part) (*citing Lifoifoi v. Lifoifoi-Aldan*, 1996 MP 14 ¶ 3, 5 N.M.I. 1, 2).

It might be argued that the trial court had no reason to lay out facts, as it did not identify its order as one for summary judgment. However, had the court properly considered this defense on a motion to dismiss, its analysis would have been confined to the four corners of the complaint. *See supra* ¶ 12. Because the order does not explain how the allegations in the complaint supply the elements of the defense, the ruling for the estate under Rule 12(b)(6) was analogously unsupported.

[19] Although the non-claim provision appears in Chapter 9 of the Probate Law, a chapter relating to intestate succession, its wording and that of the other five final provisions clearly pertain to all estates. 8 CMC §§ 2922-2927. Further, all but the last (which was enacted later) were distinguished in PL 3-106, from whence the present Probate Law springs, as belonging to a phantom Chapter 10. *Id*.

[20] Because Executor failed to meet his initial burden on summary judgment, we need not consider Ms. Sablan's stated grounds for appeal.

CONCLUSION

¶29 On summary judgment, the moving party always bears the initial burden of production. Until he meets that burden, the non-moving party is not required to make any evidentiary showing. Here, the trial court did not ask Executor to demonstrate his entitlement to the affirmative defense asserted. This is no mere procedural error; on the evidence presented, Executor did not have the right to a sixty-day limit on claims against Decedent's estate because he failed to include the required notice to creditors in his pre-probate hearing publication.

¶30 The equitable design of the Northern Mariana Islands Probate Law can only be realized through conscientious adherence to time constraints. As a result, summary judgment should not have been granted.

¶31 Based on the foregoing the trial court's judgment is **REVERSED** and **REMANDED** for further proceedings.

SO ORDERED THIS 28TH DAY OF OCTOBER 2002.

/s/Alexandro C. Castro
ALEXANDRO C. CASTRO, Associate Justice

/s/Juan T. Lizama
JUAN T. LIZAMA, Justice *Pro Tempore*

/s/Virginia Sablan-Onerheim
VIRGINIA SABLAN-ONERHEIM,
Justice *Pro Tempore*